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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

13 Cr. 315 (WHP)

5 FREDERIC CILINS,

6 Defendant.

7 -----x

8 New York, N.Y.

9 July 25, 2014

2:15 p.m.

10 Before:

11 HON. WILLIAM H. PAULEY III,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA

United States Attorney for the

16 Southern District of New York

TAREK HELOU

17 ELISHA KOBRE

Assistant United States Attorneys

18 COOLEY LLP

Attorneys for Defendant

19 BY: WILLIAM SCHWARTZ

20 ANNIKA GOLDMAN

21 MICHELLE SMITH

22 ALSO PRESENT: JOSE VOIGT, Interpreter (French)

23 CHRISTOPHER MARTINEZ, FBI

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(Case called)

MR. HELOU: Good afternoon, your Honor, Tarek Helou for the United States. I'm here at counsel table with Assistant U.S. Attorney Elisha Kobre and FBI Special Agent Chris Martinez.

THE COURT: Good afternoon, Mr. Helou.

MR. SCHWARTZ: Good afternoon, your Honor, William Schwartz from Cooley LLP. I'm here with my colleague Annika Goldman and with my cocounsel, Michelle Smith.

THE COURT: Good afternoon, Mr. Schwartz. I note the presence of a French interpreter. Would you identify yourself for the record.

THE INTERPRETER: Jose Voigt. Good afternoon, your Honor.

THE COURT: Good afternoon, Ms. Voigt.

Please administer the oath to the interpreter.

(Interpreter sworn)

THE COURT: Mr. Cilins, are you able to understand what's being said here this afternoon through the French interpreter?

THE DEFENDANT: Yes, your Honor.

THE COURT: Good afternoon.

This matter is on for sentencing. Are the parties ready to proceed?

MR. HELOU: Yes, your Honor.

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1 MR. SCHWARTZ: Defendant is ready, your Honor.

2 THE COURT: Mr. Schwartz, have you reviewed with your  
3 client the presentence investigation report?

4 MR. SCHWARTZ: I have, your Honor.

5 THE COURT: Are there any factual matters set forth in  
6 the report that you believe warrant modification or correction?

7 MR. SCHWARTZ: Your Honor, as you may know from  
8 reading the report, we objected to certain paragraphs, the  
9 background paragraphs on several grounds, not all of which are  
10 stated in the report, paragraphs 6 through 12, and the  
11 government has informed me that those were merely meant as  
12 allegations to show the background to the crime, not anything  
13 requiring factual findings. So we have nothing further.

14 THE COURT: Very well.

15 Mr. Helou, does the government believe that there are  
16 any modifications that need to be made with respect to the  
17 facts in the report?

18 MR. HELOU: No, your Honor.

19 THE COURT: Mr. Schwartz, do you wish to be heard?

20 MR. SCHWARTZ: I do, your Honor.

21 If it please the Court, I find sentencing  
22 presentations to be the most difficult thing I do as a lawyer,  
23 particularly when I have come to know clients as well as I have  
24 come to know this client during his long stay in our city.

25 Just at the outset, I have come to know him as the man

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1 who is portrayed in the letters that the Court has read, a good  
2 and serious man who one can admire. He has admitted his crime  
3 which occurred during three meetings in Jacksonville, Florida  
4 in April of 2013.

5 In its submission the government begins its submission  
6 with the language that he used in committing the crime. That's  
7 what the crime was. There is no question about that. We don't  
8 dispute the language. He did try to obstruct an investigation.  
9 He has pleaded guilty to that. And he is here to be sentenced  
10 for that.

11 The question isn't what were the words he used in  
12 committing the crime to which he has admitted. The question  
13 is, what is the appropriate sentence for those words and for  
14 those actions.

15 As your Honor knows from everything that has gone on,  
16 there is an agreed-to guidelines calculation in this case of 37  
17 to 46 months. To date my client has been incarcerated at the  
18 MDC for 15 months. He recently received an evaluation from the  
19 MDC which was quite favorable. They evaluate the people that  
20 are there.

21 And one of the things that they said in the evaluation  
22 which struck me, knowing him and having read the letters, they  
23 said that he is always willing to go the extra mile to help  
24 others. The evaluation said he is always willing to go the  
25 extra mile to help others. So it is clear that even the prison

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1 authorities have come to know the man that I've come to know  
2 and that is known by his family and his friends.

3 If these 15 months had been his sentence, that he has  
4 been serving his sentence and he had received good time, which  
5 is clear from the evaluation he would have received, it would  
6 have been the equivalent of serving a 17 and a half month  
7 sentence, approximately, imposed by the Court. In our memo we  
8 have urged the Court to accept that service in custody as the  
9 period of incarceration that is sufficient in this case to  
10 serve the ends of justice, and we maintain still, your Honor,  
11 that time served is the appropriate sentence.

12 I'm sure that the Court has closely reviewed that memo  
13 and, more importantly, I am quite confident that the Court has  
14 read the letters, many of them quite moving and extraordinary.

15 By the way, your Honor, as I've learned a little bit  
16 in my cultural education in this case, particularly difficult  
17 for French nationals to write the kinds of letters we have  
18 become accustomed to as Americans to express themselves to a  
19 stranger as openly as they have expressed themselves to the  
20 Court. And I think that says something about Mr. Cilins, that  
21 they have been willing to bear themselves in this way.

22 I note for the Court that Mr. Cilins' wife, one of his  
23 daughters, and his brother are in the courtroom today and that  
24 his youngest daughter, Emma, whom I am sure your Honor has read  
25 about, is close to the courthouse awaiting your Honor's

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1 decision.

2 I am not going to reargue or repeat in any detail what  
3 we have said in our memorandum other than to emphasize that, as  
4 the letters show, as I have come to learn, as the MDC  
5 authorities have themselves come to learn, Fred Cilins is a  
6 decent and beloved man with powerful ties to his family and to  
7 his friends. He has, because of those ties, suffered greatly  
8 being thousands of miles away from them, and I think, more  
9 importantly, has suffered even more greatly because of his  
10 knowledge of what he has done to them and, in particular, to  
11 his family, as your Honor has read.

12 It's been very severe punishment. I'm not at all  
13 trying to suggest that there is anything inappropriate about  
14 the fact that he has been incarcerated. This is a crime, I  
15 think he would agree, for which incarceration is very  
16 appropriate. All of us who practice in the criminal justice  
17 system need to know that it is untainted.

18 But he has been punished and punished greatly. And  
19 it's not a case, as the government and I understand and  
20 expected them to say in their memorandum what they said, but  
21 this is not a case of just a generic foreigner. Yes, we know  
22 our prisons are filled, sadly, with foreign nationals. Not a  
23 case of a generic foreigner whose family is suffering and can  
24 be viewed, that happens to everybody. It happens to every  
25 prisoner.

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1 But we think in this case we have presented the Court  
2 with particulars that demonstrate that there is something about  
3 Fred Cilins that requires the Court to take into account  
4 punishment he has received as a result of what he's done to his  
5 family and to account for that in the sentence that the Court  
6 gives.

7 We think that, as I said, time served and, at a  
8 minimum, a sentence below the guidelines is what's warranted.

9 We all know that since Booker the law has been that  
10 the guidelines are advisory. What's interesting, your Honor,  
11 is the practice of the courts in looking to the guidelines and  
12 how they have looked at them. And I think for this case what's  
13 particularly interesting is how the guidelines have played out  
14 in this district, after Booker.

15 Two days ago the sentencing commission released its  
16 latest report. And it does an analysis of the United States  
17 courts, district courts, district by district, in extraordinary  
18 details. It's the first time I ever looked at one of these  
19 things. I was actually amazed at the work that goes into it.  
20 I looked at what is happening here, because this is the  
21 courthouse that I had to appear in this week and this is the  
22 courthouse that I spend most of my life in.

23 If the Court will permit just a couple of statistics.  
24 And we are talking about the period from October 2013 through  
25 March 2014, the last quarter of the calendar year of 2013 and

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1 the first quarter of the calendar year of 2014. If you look at  
2 all sentences in this district, and there were several  
3 thousand -- 751 sentences, a longer period then. In the whole  
4 country it was several thousand sentences. There were 751  
5 sentences in this district in that period. In 42 percent of  
6 those sentences the Court, relying solely on 3553(a) factors,  
7 went below the guidelines. If you take out of that total the  
8 cases where the Court went below because of 5K1 motions by the  
9 government, or because the Court departed downward from the  
10 guidelines under the guideline analysis, 56 percent of the  
11 remaining cases were below guidelines sentences.

12 It is, to me, you know, powerful evidence that in a  
13 case where you have a person like this person, who has come to  
14 this country, made a terrible mistake, committed a crime, gone  
15 to jail, suffered greatly because of his own personal  
16 circumstances and what it has done to others, who is not likely  
17 to repeat what he has done or to commit any further crimes  
18 because he has seen what that does, and who is not a danger in  
19 any way to society, should he be released today from this  
20 courtroom. This is the kind of case that should fit within the  
21 majority of those non 5K1 sentence departure cases. And the  
22 Court should sentence well below the guidelines; we think, at  
23 time served.

24 About the family and the friends, your Honor, I am  
25 going to say no more because I know you've read.



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1 But I would like to note one more thing before I sit  
2 down. As your Honor knows, Mr. Cilins has asserted the Fifth  
3 Amendment with respect to the financial affidavit that he was  
4 requested to give to probation. As your Honor also knows, I'm  
5 sure even without our having provided the authority, which the  
6 government had, that the case law in this circuit is pretty  
7 powerful that the Fifth Amendment applies to that. I was  
8 surprised to see the government in a footnote state that his  
9 declination to provide that affidavit was an attempt to thwart  
10 the Court. I'm certain that your Honor would never dream of  
11 holding someone's Fifth Amendment assertion against them in any  
12 way in a sentencing, but I did feel that it was important for  
13 me to note that I was not happy with the suggestion implied in  
14 the government's memorandum.

15 Your Honor, Fred Cilins has enjoyed our hospitality  
16 for a long time. His family, and particularly his children,  
17 are desperately in need of him and they have suffered because  
18 of what he has done, but they need not suffer anymore, nor  
19 should he be punished anymore for what he has done.

20 We ask the Court to sentence him to time served.

21 THE COURT: Thank you, Mr. Schwartz.

22 Mr. Helou.

23 MR. HELOU: Thank you, your Honor.

24 Your Honor, the defendant has argued that when he came  
25 to the United States he made a mistake. Those words that he

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1 uttered, destroy those documents, we must destroy them now,  
2 were not a mistake. Those were the culmination of a year-long  
3 effort to interfere with this witness. He's minimized his  
4 conduct in that respect. This was not a spur-of-the-moment  
5 decision. He met with her several times.

6 He went to two different countries, the United States  
7 and Guinea, in an attempt to find her. He also worked with  
8 other people to obstruct this investigation. And the fact that  
9 he worked with other people, your Honor, comes from his own  
10 words, which were recorded on a wiretap, and also his words  
11 which were recorded during meetings with the witness he was  
12 interfering with. This was a very extensive and complex effort  
13 to thwart this investigation. He told the witness that he  
14 would use attorneys to hide money that she would receive.

15 He has accepted responsibility, your Honor, but he has  
16 not shown remorse.

17 The other issue here, this is not a generic foreigner  
18 who commits a crime in the United States. This is a very  
19 wealthy defendant. He owns five properties in the United  
20 States and co-owns two more. The total worth of those is  
21 almost \$4 million. In addition to the approximately \$2 million  
22 in payments that created the guidelines level in this case, he  
23 sent \$3.6 million into the United States. Most foreign  
24 defendants in this country do not have the means that he has to  
25 lead a successful life.

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1           The other problem with the defendant's wealth in this  
2 case, your Honor, is that you have a group we were  
3 investigating for allegations that a group of very wealthy  
4 people had gone to a very poor country and were trying to take  
5 a very valuable asset from that country. Your Honor, it is sad  
6 that the defendant's family and friends will not be able to be  
7 with him for whatever amount of time he is incarcerated, but  
8 that is a normal consequence of any conviction in a criminal  
9 case. Their loss of their family member is no different than  
10 any other defendant's family.

11           One other issue is, although they are overseas, they  
12 have the ability to come here to see him. For many defendants'  
13 families, being sent two, three states away can prohibit them  
14 from seeing him.

15           Finally, I want to address his failing to provide  
16 information to the probation office about his finances. He  
17 does have a Fifth Amendment right to do that. However, if he  
18 exercises that Fifth Amendment right, the Court may consider  
19 only the evidence that is in the record about his finances and  
20 his ability to afford a fine. And all the evidence in this  
21 case, your Honor, shows that he is very wealthy.

22           If the Court has any additional questions, I'm happy  
23 to respond to them. Otherwise, I submit.

24           THE COURT: Thank you very much, Mr. Helou.

25           Mr. Schwartz, does your client wish to address the

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1 Court before sentence is imposed?

2 MR. SCHWARTZ: He does, your Honor. And he would like  
3 to make a statement both in his native language and in English.

4 THE COURT: The statement in his native language will  
5 be interpreted for the court reporter and the Court.

6 MR. SCHWARTZ: Of course.

7 THE COURT: All right.

8 THE DEFENDANT: Your Honor, I would like to apologize  
9 before this Court for what I have done and for my family, for  
10 all the suffering that injured.

11 (In English) I would like to apologize, your Honor, to  
12 the Court for what I did and for my family for the pain that I  
13 have endured.

14 THE COURT: The defendant, Frederick Cilins, comes  
15 before this Court having pled guilty to obstructing a federal  
16 criminal investigation, an offense that strikes at the very  
17 foundation of the sound administration of justice. This Court  
18 has reviewed the presentence investigation report. I adopt the  
19 findings of fact in that report as my own and will cause the  
20 report to be docketed and filed under seal as part of the  
21 record in this case.

22 Turning, first, to the guidelines calculation, in this  
23 case the base offense level is calculated with reference to the  
24 value of payments involved. The obstruction involved bribery.  
25 And because the value of the payments were more than a million

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1 dollars, the total base offense level is 24.

2 Mr. Cilins pled guilty before this Court. He accepted  
3 responsibility for his criminal conduct and, accordingly, I  
4 grant him a three-level reduction for acceptance. This is his  
5 first criminal conviction and his criminal history category is  
6 a I. And under the guidelines, with a total offense level of  
7 21 and a criminal history category of I, that yields a  
8 guideline range of 37 to 46 months of imprisonment, which is  
9 also consistent with the parties' plea agreement in this case.

10 Now, turning to the 3553(a) factors, I begin by noting  
11 that I have reviewed all of the submissions by the parties in  
12 connection with this sentencing. The very nature of  
13 Mr. Cilins' offense is an affront to the sound administration  
14 of justice. Mr. Cilins sought to obstruct a major criminal  
15 investigation into an alleged long-running bribery scheme to  
16 obtain billions of dollars of Guinea's mineral wealth. The  
17 subjects of that investigation are allegedly wealthy  
18 international businessmen, including Mr. Cilins, who had the  
19 resources and sophistication to attempt to thwart the  
20 investigators.

21 The obstructive conduct here, as the government points  
22 out in its submission, was particularly sophisticated and  
23 involved several trips to the United States and Guinea, the  
24 preparation of fraudulent documents, and efforts to suborn  
25 perjury. It's the kind of criminal conduct that screams for

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1 general deterrence.

2 Mr. Cilins was determined to do everything he could to  
3 scuddle the government's underlying investigation into the  
4 alleged bribery of foreign government officials. Mr. Cilins  
5 and other international businessmen who may consider the risks  
6 of letting an investigation run its course and make a  
7 deliberate decision, as Mr. Cilins did, to obstruct it, need to  
8 understand that obstruction of justice is a serious crime for  
9 which defendants will face appropriate consequences.

10 Now, this Court understands fully that Mr. Cilins is a  
11 French citizen who has been in custody since his arrest in  
12 Florida on April 15, 2013. Through all of the letters that  
13 were submitted on his behalf and counsel's argument to the  
14 Court, both in his brief and here today, I appreciate  
15 Mr. Cilins' family circumstances.

16 I also recognize that the distance between Mr. Cilins  
17 and his family makes it extremely difficult for them to have  
18 contact. By all accounts, Mr. Cilins is a devoted family man  
19 who is particularly attentive to his children and to those in  
20 need around him. No doubt his absence creates significant  
21 hardship for his family.

22 He also appears to be an individual who is revered by  
23 many people who are simply acquaintances. It's difficult for  
24 this Court to reconcile his generosity and understanding in his  
25 personal life with his calculating and lawless behavior in

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1 connection with his obstruction of the government's  
2 investigation. Indeed there is a Jekyll & Hyde aspect to  
3 Mr. Cilins. On the one hand, it's reported to me that he  
4 teaches his children to give their toys to him so that he can  
5 provide them to impoverished children in Africa. On the other  
6 hand, as the government points out here, he used his  
7 sophisticated talents to attempt to fraudulently siphon mineral  
8 wealth from the people in the very same countries. It's very  
9 difficult to reconcile that kind of conduct.

10 The defendant, as Mr. Schwartz has pointed out, has  
11 every right to invoke his Fifth Amendment privilege in  
12 connection with the disclosure of his financial assets. This  
13 Court can consider those matters of record relating to  
14 Mr. Cilins in fashioning certain relief here as part of the  
15 judgment, and I will do so in a few moments. But suffice it to  
16 say that Mr. Cilins has been involved in very substantial  
17 financial transactions over the last several years and, indeed,  
18 even in connection with the matters at hand in the case before  
19 me.

20 In looking at Mr. Cilins as an individual and all of  
21 the circumstances here, this Court believes that a sentence  
22 within the guideline range is somewhat more than is necessary  
23 in this case to effect the necessary principles, especially the  
24 need for both specific and general deterrence and recognition  
25 of the gravity of the criminal conduct here which, as I've

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1 said, strikes at the heart of the criminal justice system.  
2 And, at the same time, this Court cannot conclude that a  
3 sentence as requested by the defendant of time served is  
4 sufficient.

5 So it is against that backdrop that I'm prepared to  
6 impose sentence on Mr. Cilins, and I would ask him to stand at  
7 this time.

8 Mr. Cilins, in my remarks I have tried to balance the  
9 gravity of your offense with your family circumstances and the  
10 facts of your arrest in Florida and your detention here. This  
11 kind of conduct warrants a significant term of imprisonment.

12 It's my judgment, Mr. Cilins, that you be sentenced to  
13 a term of 24 months of imprisonment, to be followed by three  
14 years of supervised release, subject to all of the standard  
15 conditions of supervised release and the special condition that  
16 you comply with any and all directives of immigration  
17 authorities.

18 I am going to impose on you the maximum fine permitted  
19 under the guidelines of \$75,000. I have no doubt that you will  
20 be able to pay that fine. I am going to impose a \$100 special  
21 assessment in connection with the case. And is the government  
22 submitting an order of forfeiture?

23 MR. HELOU: I have it here, your Honor. May I  
24 approach the bench?

25 THE COURT: You may.



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1 I will sign an order of forfeiture in connection with  
2 the money that was seized that was on your person at the time  
3 of your arrest in Florida.

4 This, Mr. Cilins, constitutes the sentence of this  
5 Court. I advise you that to the extent you have not previously  
6 waived your right to appeal, you have the right to appeal. I  
7 advise you further that if you cannot afford counsel, counsel  
8 will be provided to you free of cost. You have been ably  
9 represented by Mr. Schwartz and his colleagues from Florida  
10 throughout the proceedings before me, and I am confident that  
11 they will advise you further with respect to your appellate  
12 rights.

13 You may be seated.

14 THE COURT: Are there any further applications?

15 MR. HELOU: Your Honor, the government moves to  
16 dismiss the outstanding counts in both the indictment and the  
17 superseding indictment.

18 THE COURT: The government's application is granted.

19 MR. HELOU: Thank you, your Honor.

20 MR. SCHWARTZ: Your Honor, we would ask that the Court  
21 recommend to the Bureau of Prisons that Mr. Cilins serve his  
22 sentence at the Moshannon Valley facility in Pennsylvania,  
23 which will enable -- and if you could state this in the  
24 recommendation, it would be very much appreciated -- his family  
25 to be fly directly to New York, without having to change

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1 flights, and then drive there. Thank you.

2 THE COURT: I will include that recommendation,  
3 Mr. Schwartz, on the judgment.

4 Anything further?

5 MR. HELOU: No, your Honor.

6 MR. SCHWARTZ: No your Honor.

7 THE COURT: This matter is concluded. Have a good  
8 afternoon.

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